

FILED

09/05/2024

Benny Stewart
#3007159
700 Conley Lake Road
Deer Lodge, MT 59722



ORIGINAL

FILED

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0528

SEP 05 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE MONTANA SUPREME COURT

Benny Stewart,
Petitioner,

Cause No:

V.

Judge Robert Whelan and
The Second Judicial District
Court for the County of
Butte Silver-Bow,
Respondent.

PETITION FOR WRIT OF
SUPERVISORY CONTROL
MONT.R.APP.P. 14
JUDGE ROBERT WHELAN
THE SECOND JUDICIAL DISTRICT
COURT, COUNTY OF
BUTTE-SILVER BOW

Comes now, Petitioner Benny Stewart and would move this Honorable Court for a Writ of Supervisory Control from the Second Judicial District Court for the County of Butte Silver-Bow in Cause Number DC 09-194, motion for Summary Judgment to vacate the judgment of the State of Montana for Lack of Subject Matter Jurisdiction.

Stewart's motion for Summary Judgment was filed on the 25th day of June, 2024 and the Butte Silver-Bow County Attorney was served on the 24th day of June, 2024, (see exhibit A); Stewart's reply to the State of Montana's non-response to Stewart's motion for Summary Judgment was filed on the 18th day of July, 2024, (see exhibit B); Stewart's motion for Summary Judgment Hearing was filed on the 29th day of July, 2024, (see exhibit C); Stewart's motion for a Resolution

and notice for filing Writ of Supervisory Control to the Montana Supreme Court was filed on the 6th day of August, 2024 (see exhibit D) and was served on this Honorable Court. Benny Stewart has complied with MONT.R.CIV.P. Rule 56.

The State of Montana concedes, there is no genuine dispute as to any material fact and Benny Stewart is entitled to judgment as a matter of law, (M.R.CIV.P. 56(E)(2)(see exhibit B). Benny Stewart has shown by the court docket record, there is no genuine dispute as to any material fact and Benny Stewart is entitled to judgment as a matter of law, the record speaks for itself.

As of the 20th day of August, 2024 the Second Judicial District Court has not ruled in this case and has abused its discretion with this delay.

Barrus v. Mont. First Judicial Dist. Court, 2020 MT

HN4-Supervisory Control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. Mont.R.App.P. 14(3).

The case must meet one or more of three additional criteria:

(a) the other court is proceeding under a mistake of law and is causing a gross injustice;

(b) constitutional issues of state wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case, Mont.R.App.P. 14(3)(a)-(c).

Lack of Subject Matter Jurisdiction is an extraordinary circumstance that is a structural error that requires reversal. The Second Judicial District Court proceeded under a mistake of law and caused a gross injustice to Stewart, violating Stewart's

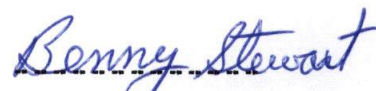
Montana Constitutional laws and Statutes of Montana as well as the United States Constitutional Right to due process of the law and equal protection of the law.

Stewart's motion for Summary Judgment involves purely legal questions and urgent or emergency factors to protect the fairness, integrity and public reputation of the Second Judicial District Court and the judicial process of the State of Montana.

Summary Judgment Must Be Granted, M.R.CIV.P. 56, (see exhibit A-D).

Benny Stewart moves this Honorable Court for a Writ of Supervisory Control to rule in this case.

Respectfully Submitted on this ³⁰/₂₀th day of August, 2024.


Benny Stewart

CERTIFICATE OF SERVICE



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Bowen Greenwood
Clerk of Supreme Court
State of Montana

I certify that I filed this Petition for Writ of Supervisory Control Mont.R.App.P. 14 with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Butte-Silver Bow County Attorney
155 West Granite Street
Butte, MT 59701

Montana Attorney General
215 N. Sanders Street
P.O. Box 201401
Helena, MT 59620

Dated this 20th day of August, 2024.

Benny Stewart

Benny Stewart

FILED

CERTIFICATE OF SERVICE

SEP 05 2024



ORIGINAL

Bowen Greenwood
Clerk of Supreme Court
State of Montana

I certify that I filed this Petition for Writ of Supervisory Control, Mont.R.App.P. 14 with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Judge Robert Whelan
The Second Judicial District Court
for the County of Butte-Silver Bow
155 West Granite Street
Butte, MT 59701

I certify that I served a copy of the corrected page 1 of this Petition for Writ of Supervisory Control, Mont.R.App.P. 14 as follows:

Butte-Silver Bow County Attorney
155 West Granite Street
Butte, MT 59701

Montana Attorney General
215 N. Sanders Street
P.O. Box 201401
Helena, MT 59620

Dated this 30th day of August, 2024.

Benny Stewart